

S/N 10/697,788

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Michael J. BULLINGER	Examiner:	Phi Dieu Tran A
Serial No.:	10/697,788	Group Art Unit:	3637
Filed:	October 30, 2003	Docket No.:	10226.0010US11
Title:	GUTTER AND COVER SYSTEM		

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on May 30, 2007.

By:

Name:

Lorna Spangenberg
Lorna Spangenberg

APPELLANT'S BRIEF ON APPEAL

Mail Stop APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

23552

PATENT TRADEMARK OFFICE

Sir:

This Brief is presented in support of the Notice of Appeal filed November 30, 2006, from the final rejection of claims 8-25 and 28-29 of the above-identified application, as set forth in the Final Office Action mailed May 30, 2006.

Please charge Deposit Account No. 13-2725 in the amount of \$250.00 to cover the required fee for a small entity.

An oral hearing is requested. A separate request for oral hearing with the appropriate fee will be filed within two months of the Examiner's Answer.

I. REAL PARTY OF INTEREST

The real party of interest is Eastside Machine Company, Inc. by way of assignment recorded on March 11, 2003 at Reel 013823 and Frame 0375.

II. RELATED APPEALS AND INTERFERENCES

There are no related Appeals and Interferences.

III. STATUS OF CLAIMS

Claims 8-25 and 28-29 are pending. Claims 8-25 and 28-29 have been rejected and are the subject of the appeal. All pending claims are listed in the claims appendix that follows.

Claim 10 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8, 10-11 and 13-21 stand rejected under 35 U.S.C. §102 (b) as being anticipated by Knudson, U.S. Patent No. 5,845,435.

Claims 9, 22, 24 and 28-29 stand rejected under 35 U.S.C. §103 (a) as being unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

Claim 12 stands rejected under 35 U.S.C. §103 (a) as being unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

Claims 23 and 25 stand rejected under 35 U.S.C. §103 (a) as being unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

IV. STATUS OF AMENDMENTS

An amendment has not been filed after the Final Office Action.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

A summary of the claimed invention follows. The summary includes references to an embodiment disclosed in the specification. Independent claim 8 is directed to a seamless gutter and cover system (110) shown in Figure 8. A gutter (124) formed from a first coil of material has a front face (119), a bottom (115), and a rear portion (117) extending upward to a top segment. A cover (122) is formed from a second coil of material. The cover extends over the gutter (124) and has a debris separation portion (112) extending above the front face of the gutter, and a lip portion (114) extending upward and wrapping over the top segment of the gutter (124). The lip portion (114) and the top segment of the gutter (124) are pressed together along their length to form an integral gutter and cover assembly (110). See page 7, line 16 through page 8, line 2.

Independent claim 22 is directed to a seamless gutter and cover system (110) as shown in Figure 8. A gutter (124) has a front face (119) including a curving front portion (120) extending rearward and downward, a bottom (115), and a rear portion (117) extending upward to a top segment. An integral cover (122) extends over the gutter (124), having a curving front portion (125) extending downward and rearward above the front face of the gutter, a concave pooling portion (118) intermediate the rear portion (117) of the gutter and the curving front portion of the cover (125). A lip portion (114) extends upward and wraps over the top segment of the gutter.

The lip portion (114) and the top segment (117) of the gutter are pressed together along their length to form an integral gutter and cover assembly (110). This is described at page 7, line 16 through page 8, line 2.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 8, 10-11 and 13-21 are anticipated by Knudson, U.S. Patent No. 5,845,435.

Whether claims 9, 22, 24 and 28-29 are unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

Whether claim 12 is being unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

Whether claims 23 and 25 are unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

VII. ARGUMENT

Rejection of claims 8, 10-11 and 13-21 under 35 U.S.C. §102 (b) as being anticipated by Knudson, U.S. Patent No. 5,845,435.

Claims 8, 10-11 and 13-16.

The Office Action of May 30, 2006 stated that with regard to claim 8, 10-11, and 13-16, *Knudson* shows a seamless gutter and cover system comprising a seamless gutter formed from a first coil of material having a front face, a bottom and rear portion extending upward to a top segment, a cover system having a cover formed from a second coil of material, the cover extends over the gutter and has a debris separation portion extending above the front face of the gutter. A lip portion extends upward and wraps over the top segment of the gutter, the lip portion and the top segment of the gutter are pressed together along their length to form an integral gutter and cover assembly, the interlocking means comprising crimping the top segment of the gutter and the flange portion of the cover together to interlock the top segment of the gutter with the flange portion of the cover. The Action states that the gutter is made of a first material and the cover is made of a second material, the first material being aluminum, the gutter and cover are integrally connected without a connector member, mounting means for securing the system to the edge of the roof, the mounting means further comprising mounting hardware for securing the system to the edge of the roof, the mounting hardware extends through a hole in the gutter and cover system, the mounting system is repeatedly positioned at determined distances along the gutter and cover system.

Applicant respectfully asserts that a close reading of the *Knudson* reference clearly shows that the *Knudson* reference has not been understood and has not been properly characterized in the Office Action. Applicant asserts that *Knudson* neither teaches nor suggests such a seamless gutter and cover system. The Office Action asserts that *Knudson* discloses crimping the top segment of the gutter and the flange portion of the cover together to interlock the top segment of the gutter with the flange portion of the cover. However, careful reading of *Knudson* reveals that the references does not teach interlocking or crimping. In fact, *Knudson* clearly teaches away from such an integral gutter and cover assembly. As recited in column 4, lines 53-59, Knudson recites:

" . . . there is shown a two-piece shielded gutter 92 mounted on support structure 13 having a roof 14. The stationary gutter shown has a semicircular bottom wall 96, a front wall 97 and a back wall 98 forming a U-shaped gutter channel with a top opening. A removable top shield 99 extends downwardly and forwardly from the upper end or top of the back wall 98."

Knudson clearly teaches a cover that is **removable** from the gutter assembly, described as removable top shield 99. Applicant asserts that the problem of joining a cover to a gutter integrally is a difficult process, and has not been accomplished by the prior art. Moreover, it is clear that *Knudson* does not teach or suggest such a system. Reading further, it can be seen that the *Knudson* patent provides further clarification that the cover is a removable cover. Referring to Figure 11 and elements 99a and 98a, *Knudson* recites at column 6, lines 42-48:

"Referring now to FIG. 11, a modified form of separate shield could have a hook 99a at the rear end of the shield opening toward the bottom that would fit down over the upper straight end 98a of the back wall of the gutter so the rear of the shield would attach to the gutter rather than the support device. Otherwise the device 131 and mounting for the shield would be the same as shown in FIGS. 9 and 10."

FIG. 11 also shows a removable cover rather than an integral cover and gutter.

Applicant asserts that there is no teaching or suggestion in *Knudson* that the elements are crimped together. Rather, Applicant asserts that *Knudson* teaches away from the present invention as the cover must be removable. In addition to just being crimped, Applicant notes that claim 8 recites that the lip portion and the top segment of the gutter are pressed together along their length to form an integral gutter and cover assembly. Not only does *Knudson* not teach that the gutter and cover assembly are crimped together forming an integral gutter and cover assembly, but *Knudson* teaches a removable top shield that cannot be pressed to the gutter assembly along its length as recited in claim 8. Moreover, as the top shield is removable, it is not possible for the cover and gutter to be pressed together.

The present invention provides advantages that are not possible with the prior art, including *Knudson*. The seamless gutter and cover assembly provides for forming a single gutter and cover assembly on the job site from a machine without having to form separate gutters and covers that are then later connected together. Once the gutters and covers have been formed, it is difficult to join them together, even when they are assembled, as access to the long gutter and

cover assembly is difficult, especially for portions that are not at the ends of the pieces. The present invention provides a simple and easily installable gutter and cover assembly that is not possible with the prior art. Applicant asserts that claim 8 distinguishes over *Knudson*.

Moreover, claims 10-11 and 13-16 also patentably distinguish over *Knudson* for at least the same reasons. Regarding claims 17-21, Applicant asserts that *Knudson* neither teaches nor suggests the integral gutter and cover system as discussed above with regard to claim 8, and further comprising the support member of such an integral system. The present invention as recited in claims 17-21 provides for an integrally connected gutter and cover assembly with support members that are slid into position. Applicant asserts that *Knudson* does not anticipate such a gutter and cover assembly. Applicant asserts that claims 17-21 are allowable over *Knudson* for the reasons discussed above with regard to claim 8.

Rejection of claims 9, 22, 24 and 28-29 under 35 U.S.C. §103 (a) as being unpatentable over *Knudson*, U.S. Patent No. 5,845,435 in view of *Manoogian Jr.*, U.S. Patent No. 5,072,551.

Claim 9

The Office Action of May 30, 2006 stated that *Knudson* shows all the claim limitations except for the cover comprising a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover. The Office Action stated that *Manoogian Jr.* discloses a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover to enable the slowing of rain water so that rain water would properly drain into the gutter. The Office Action asserts that it would have

been obvious to one having ordinary skill in the art at the time of the invention to modify *Knudson's* structure to show the cover comprising a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover because it would allow for the slowing of rain water so that rain water would properly drain into the gutter as taught by *Manoogian Jr.* Applicant respectfully traverses the rejection.

As stated above, a careful reading and proper characterization of *Knudson* shows that *Knudson* does not teach or suggest the gutter and cover assembly recited in claim 8, as discussed above. Applicant respectfully asserts that *Manoogian Jr.* fails to overcome those shortcomings of *Knudson*. The combination of *Knudson* and *Manoogian Jr.* fails to teach or suggest the integral cover and gutter assembly, and fails to teach or suggest that the elements are pressed together along their length to form the integral cover and gutter assembly. *Manoogian Jr.* does not teach or suggest such structure. Moreover, *Manoogian Jr.* when combined with *Knudson* still fails to teach or suggest such structure. Applicant therefore asserts that the combination of *Knudson* and *Manoogian Jr.* fails to establish a *prima facie* case of obviousness with regard to claim 8. Applicant asserts that claims 9 also patentably distinguishes over the combination of *Knudson* and *Manoogian Jr.* for at least the same reasons.

Claims 22, 24, and 28-29

The Office Action of May 30, 2006 stated that *Knudson* shows all the claim limitations, but the Office Action fails to address all of the limitations of claim 22. Claim 22 recites a gutter having a front face, a curving front portion extending rearward and downward, a bottom and a rear portion extending upward to a top segment. Moreover, claim 22 recites an

integral cover extending over the gutter, having a curving front portion extending downward and rearward above the front face of the gutter. Claim 22 also recites a concave pooling portion intermediate the rear portion of the gutter and the curving portion of the cover, and a lip portion extending upward and wrapping over the top segment of the gutter. Finally, claim 22 recites that the lip portion and the top segment of the gutter are pressed together along their length to form an integral gutter and cover assembly. As discussed above with regard to claim 8, *Knudson* fails to teach or suggest the recited structure. *Knudson* teaches a **removable** top shield and fails to disclose the lip portion and top segment pressed together along their length to form an integral gutter and cover assembly. As discussed above, not only does *Knudson* not teach or suggest such structure, but careful examination of *Knudson* reveals that it teaches a removable top shield, which teaches away from the integral assembly of the present invention. *Manoogian Jr.* fails to remedy these shortcomings of *Knudson*. Applicant asserts that claim 22 therefore patentably distinguishes over *Knudson* and *Manoogian Jr.* for at least reasons similar to those discussed above with regard to claim 8. Moreover, Applicant asserts that claims 24 and 28-29 are also allowable for at least these same reasons.

Rejection of claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

Claim 12.

The Office Action of May 30, 2006 stated that Knudson shows all the claim limitations except for the second material comprising copper. The Action states that it would

have been obvious to modify *Knudson* to show that the second material comprises copper because it has been held to be within the general skill of a worker in the art. The Action asserts that aluminum and copper are well-known materials for outdoor use as they are rust resistant. Applicant respectfully traverses the rejection.

Applicant asserts that claim 8 is allowable over the combination of *Knudson* and *Manoogian Jr.* as discussed above. Applicant asserts that as claim 12 depends on claim 8, claim 12 is also allowable for at least the same reasons discussed above. Applicant asserts that claim 12 patentably distinguishes over *Knudson* in view of *Manoogian Jr.*, and requests that the rejection be withdrawn.

Rejection of claims 23 and 25 as being unpatentable over Knudson, U.S. Patent No. 5,845,435 in view of Manoogian Jr., U.S. Patent No. 5,072,551.

Claims 23 and 25.

The Office Action of May 30, 2006 stated that *Knudson* shows all of the claim limitations of the gutter except a front face defining a K-style or square profile. The Action states that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify *Knudson's* structure to show the gutter front face defining a K-style or square profile because it would have been an obvious matter of engineering design choice. Applicant respectfully traverses the rejection. Applicant asserts that claim 22 is allowable for at least the reasons discussed above. Applicant asserts that dependent claims 23 and 25 are also

allowable for at least the same reasons. Applicant requests that the rejection of claims 23 and 25 therefore be withdrawn.

SUMMARY

For the reasons discussed above and others, Applicant asserts that the claims patentably distinguish over the cited prior art and any other prior art. Applicant requests a favorable decision on the appeal, that all the Examiner's rejections be reversed, and allowance of the pending claims.

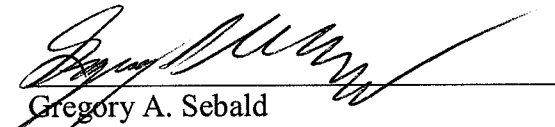
Please charge any additional fees or credit overpayment to Merchant & Gould Deposit Account No. 13-2725.

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CLAIMS APPENDIX

1-7. (Cancelled)

8. (Currently Amended) A seamless gutter and cover system comprising:

a gutter formed from a first coil of material having a front face, a bottom and a rear portion extending upward to a top segment;

a cover formed from a second coil of material, wherein the cover extends over the gutter and has a debris separation portion extending above the front face of the gutter, and a flange lip portion extending upward and wrapping over ~~adjacent~~ the top segment of the gutter, and

~~interlocking means for coupling wherein the lip portion and the top segment of the gutter and cover~~ are pressed together along their length to form a single unit an integral gutter and cover assembly.

9. (Original) The gutter and cover system according to claim 8, wherein the cover further comprises a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover.

10. (Original) The gutter and cover system according to claim 8, wherein the interlocking means comprises crimping the top segment of the gutter and the flange portion of the cover together to interlock the top segment of the gutter with the flange portion of the cover.

11. (Original) The gutter and cover system of claim 8, wherein the gutter is made of a first material and the cover is made of a second material.

12. (Original) The gutter and cover system of claim 11, wherein the first material comprises aluminum and the second material comprises copper.

13. (Currently Amended) The gutter and cover system of claim 8, wherein the gutter and cover are ~~attached~~ integrally connected without a connector member.

14. (Original) The gutter and cover system of claim 8, further comprising mounting means for securing the system to the edge of the roof.

15. (Original) The gutter and cover system of claim 14, wherein the mounting means further comprises mounting hardware for securing the system to the edge of the roof, wherein the mounting hardware extends through a hole in the gutter and cover system.

16. (Original) The gutter and cover system of claim 15, wherein said mounting means is repeatedly positioned at determined distances along said gutter and cover system.

17. (Original) The gutter and cover system of claim 8, further comprising an internal support member for reinforcing the gutter and cover.

18. (Currently Amended) The gutter and cover system according to claim 17, wherein the internal support member further comprises a debris separation support segment juxtaposed to an underside of the debris separation portion of the cover and having a profile with an upper edge matching the debris separation portion of the cover, and a rear portion extending downward to a front face segment.

19. (Original) The gutter and cover system described in claim 18, further comprising fixation means for securing the internal support member with respect to the gutter and cover system.

20. (Currently Amended) The system of claim 19, wherein the fixation means further comprises mounting hardware for securing the internal support member to the gutter and cover system, wherein the mounting hardware extends through a hole in the ~~debris separation portion of the cover~~ gutter and into a hole in the debris separation support segment.

21. (Original) The system according to claim 20, wherein the internal support member is repeatedly positioned at determined distances along said gutter and cover system.

[20] 22. (Currently Amended) A seamless gutter and cover system comprising:

a gutter having a front face, a curving ~~top~~ front portion extending rearward and downward, a bottom and a rear portion extending upward to a top segment;

a an integral cover extending over the gutter, having a curving front portion extending downward and rearward above the front face of the gutter, a concave pooling portion intermediate the rear portion of the gutter and the curving front portion of the cover, and a ~~flange~~ lip portion extending upward and wrapping over adjacent the top segment of the gutter, and

~~interlocking means for coupling wherein the lip portion and the top segment of the gutter and cover are pressed together along their length to form a single unit~~ an integral gutter and cover assembly.

[21] 23. (Currently Amended) The system described in ~~claim 20~~ claim 22, wherein said front face defines a K-style profile.

[22] 24. (Currently Amended) The system described in ~~claim 20~~ claim 22, wherein said front face defines a continuously curved profile.

[23] 25. (Currently Amended) The system described in ~~claim 20~~ claim 22, wherein said front face defines a substantially square profile.

26-27. (Cancelled)

28. (New) The gutter and cover system according to claim 9, wherein the kinetic energy dispersion section comprises a pooling section.

29. (New) The gutter and cover system according to claim 28, further comprising an internal support member having a pooling segment profile juxtaposed to an underside of the pooling section of the cover, and a rear portion extending downward to a front face segment.

EVIDENCE APPENDIX

A. OFFICE ACTIONS AND AMENDMENTS/RESPONSES

1. Office Action mailed October 6, 2005
2. Amendment mailed March 6, 2006
3. Final Office Action mailed May 30, 2006
4. Notice of Appeal including Petition for Extension of Time mailed
November 30, 2006

B. REFERENCES RELIED UPON BY THE EXAMINER

Knudson, U.S. Patent No. 5,845,435

Manoogian Jr., U.S. Patent No. 5,072,551

C. REFERENCES CITED BY APPELLANTS

Knudson, U.S. Patent No. 5,845,435

Manoogian Jr., U.S. Patent No. 5,072,551

D. CASES CITED IN THE BRIEF

None.

U.S. Patent Application Serial No. 10/697,788
Appellant's Brief on Appeal

RELATED PROCEEDINGS APPENDIX

None.